IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.300 OF 2004

Gunanath Jayram Joshi .. Appellant

Versus

Janardhan Hasha Gharat

since deceased thrugh his heirs .. Resopondents

Mr.V.S.Paradkar for appellant

Mr.R.D.Suryawanshi for respondent no.3

CORAM : P.V.KAKADE, J.

DATE : 18TH JULY 2005.

P.C.:

1. This is an appeal preferred by the appellant against the judgment and order dated 3.11.2003 passed by Addl. District Judge, Thane dismissing the Appeal and confirming the judgment and order passed by Civil Judge, Senior Division, Thane dismissing the plaintiff’s suit.

2. I have heard the learned counsel for both the parties. Perused the record.

3. The plaintiff filed the suit to obtain declaration to the effect that the defendant no.4 had not fixed the boundaries and further for giving the directions to him to collect the revenue record in respect of the suit land. However, it is also to be noted that while filing the suit only for declaration as against the defendant no.4 the City Survey Officer was sought. It was also alleged that the defendant nos.1 to 3 had encroached upon the suit property belonging to the plaintiff and in order to establish the encroachment such direction to the defendant no.4 is necessitated. The defendants contested the suit on various grounds, inter alia, submitting that Survey record, which was available, was correct and therefore, the suit for declaration in its present form was not maintainable in law.

. The learned trial judge on the basis of the pleadings and available evidence adjudicated the dispute and came to the conclusion that the plaintiff had not proved that there was an encroachment on his property by

defendants. It was also not established that the defendant no.4 had prepared incorrect record with regard to the boundaries of the suit land. It was also held that the court had no jurisdiction to entertain the suit and it was also bad of non jonider of parties and as such the suit came to be dismissed. The appeal was carried to the District Court. The lower appellate court after hearing both the parties confirmed the findings recorded by the lower court and dismissed the appeal. Hence the present appeal.

4. At the out set it may be noted that there is no substantial question of law involved in this appeal. Assuming for a moment that the courts below had jurisdiction to entertain the suit for direction to City Survey Officer to get lands measured, on merits the suit must fail because there is absolutely no evidence on record to support plaintiff’s plea that though there was any encroachment on his property or defendant no.4 had fabricated the survey records or that the available survey records were not correct and proper. In view of this factual matrix, I am satisfied that there is no substantial question of law involved in this appeal and as such the appeal deserves to be dismissed and stands

dismissed with no order as to costs.